



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-23/54273

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 2002, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Green County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on August 27, 2002, at Monroe, Wisconsin.

The issue for determination is if the petitioner divested assets in order to qualify for institutional MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Attorney Scott Thompson
Kittelsen, Barry, Ross Et Al
P O Box 710
Monroe, WI 53566-0710

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Jeannie Blumer, ES Supervisor
Green County Dept Of Human Services
N3152 State Road 81
Monroe, WI 53566
William E Morgan
Green County Corporation Counsel

ADMINISTRATIVE LAW JUDGE:

Joseph A. Nowick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Green County.
2. The petitioner is a resident of a skilled nursing facility. She had been certified for MA.
3. On July 19, 2002, the county agency sent a manual notice to the petitioner stating that effective June 1, 2002, her institutional MA would terminate due to the divestment of an unspecified

amount of money. The petitioner appealed prior to the effective date of the termination of the institutional MA.

4. The petitioner and her husband owned a piece of property Arizona that they transferred to their revocable trust on April 22, 1998.
5. (petitioner spouse), as trustee, sold the property for \$107,038, with a net profit of \$90,014 in July, 2001. He deposited the money into an Arizona bank account titled in the name of (petitioner spouse) or (a daughter). The petitioner was not an owner of that account. (petitioner spouse) then took \$88,700 and in the months between the end of September 21, 2001 and February 4, 2002, gave parts of it to various family members and spent some on an automobile.

DISCUSSION

A divestment is a transfer of assets for less than fair market value. Sec. 49.453(2)(a), Wis. Stats.; MA Handbook, Appendix 14.2.1. A divestment or divestments made within 36 months (60 months if the divestment is to an irrevocable trust) before an application for nursing home MA may cause ineligibility for that type of MA. Sec. 49.453(1)(f), Stats.; Handbook, App. 14.3.0. The ineligibility is only for nursing home care; divestment does not impact on eligibility for other medical services such as medical care, medications, and medical equipment (all of which are known as “MA card services” in the parlance). The penalty period is specified in sec. 49.453(3), Stats., to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services [currently \$3,726].

The issue is whether a divestment occurred. The petitioner’s attorney argued at the hearing that (petitioner spouse) owned the property at the time of sale and not the trust. In fact, (petitioner spouse) signed the closing statement as “(petitioner spouse) Trustee”. (See the last page in Exhibit #2.) The county agency’s position is that all payments from a trust but not to or for the institutionalized person is a divestment. The petitioner responded by arguing that there was no disqualifying divestment because a transfer of either homestead or non-homestead property to a spouse cannot affect MA eligibility. See MDV-70/10486 and MA Handbook, Appendix 14.4.0, items #7, #8 (04-01-99). See also s. HSS 103.065(4)(b) and (cm), Wis. Adm. Code, which states:

(cm) *Permitted divestment on or after July 1, 1990, to an exempt party - non-homestead property.* Transfer of a non-homestead resource at less than fair market value on or after July 1, 1990, is not divestment resulting in ineligibility under this section to the extent that the resource was transferred:

1. To or from the individual's spouse or to another individual for the sole benefit of the spouse;

When the revocable trust sold the property, the money went to (petitioner spouse) in his own right and to (petitioner spouse) as the trustee for the petitioner. (petitioner spouse) deposited the net proceeds in an Arizona bank account and gave away most of that money as gifts. If (petitioner spouse) deposited the money and left it in the Arizona bank account as titled, the above provision would have applied and this case would be over. Of course, that asset would no longer be exempt as a home and might have caused the petitioner to be ineligible for the months it had not yet been spent.

Wis. Admin. Code §HSS 103.065(cm) is not relevant to this case because the disqualifying transfer was not the transfer from the petitioner to her husband. I conclude that a divestment occurred after the sale of the house when (petitioner spouse) “spent” most of the proceeds from the sale of the home from his bank account by gifting it to a variety of recipients.

Spousal Impoverishment rules provide that if an institutionalized person has a spouse residing in the community, there are protections offered by §49.455, as originally mandated by the federal Medicaid

Catastrophic Coverage Act of 1988 (MCAA). Under §49.455(6), the institutionalized spouse, after being determined eligible for MA under the Spousal Impoverishment provisions, may transfer assets to the community spouse for the community spouse's needs and use. Once the assets are transferred to the community spouse, the community spouse may divest them without a penalty against the institutionalized spouse. See MA Handbook, App. 14.4.0, no. 2. Any divestment by a community spouse is a specific exception to the divestment rules found at §49.453, Stats.

In this case the Spousal Impoverishment provisions were not effectuated because there is nothing in the record to show that all of the proceeds from the sale of the home were transferred to (petitioner spouse) as the "community spouse" as he was never designated the "community spouse". Thus, he never had the freedom to transfer the asset in question without consequence as provided by the Spousal Impoverishment provisions. The money from the sale of the home was not part of a Community Spouse Asset Share as allowed by §49.455(6)(b), Stats. Thus, a disqualifying divestment occurred with the gifting of the assets by Mr. Keegan when he wrote checks in the months between the end of September 21, 2001 and February 4, 2002, thus using up almost the entire proceeds from the sale of the house. I should point out to the county agency that one check appears to be for the purchase of an automobile. If the car was for the petitioner or (petitioner spouse), it would not be a divestment.

CONCLUSIONS OF LAW

As (petitioner spouse) was not a community spouse under §49.455, he was not protected by the Spousal Impoverishment rules from having his gifts be considered a disqualifying divestment.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 15th day of
October, 2002

/s/ Joseph A. Nowick
Administrative Law Judge
Division of Hearings and Appeals
122/JAN